



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
On October 27, 2003 _____

Date of Meeting: March 24, 2003

The Mayor and Council of the city of Tucson met in regular session, in the Mayor and Council Chambers, in City Hall, 255 West Alameda, Tucson, Arizona, at 7:34 p.m., on Monday, March 24, 2003, all members having been notified of the time and place thereof.

1. **ROLL CALL**

The meeting was called to order by Mayor Walkup and upon roll call, those present and absent were:

Present:

José J. Ibarra
Carol W. West
Kathleen Dunbar
Shirley C. Scott
Steve Leal
Fred Ronstadt
Robert E. Walkup
Kathleen S. Detrick

Council Member Ward 1
Council Member Ward 2
Council Member Ward 3
Vice Mayor Ward 4
Council Member Ward 5
Council Member Ward 6
Mayor
City Clerk

Absent/Excused:

None

Staff Members Present:

James Keene
Mike Letcher
Benny Young
Scott Douthitt
Albert Elias
Eliseo Garza
Emily Nottingham
Ernie Duarte

City Manager
Deputy City Manager
Assistant City Manager
Deputy Director Finance Department
Comprehensive Planning Task Force Dir.
Solid Waste Director
Community Services Director
Development Services Director

Michael House
Michael McCrory

City Attorney
Assistant City Attorney

Suzanne Mesich
Gar Smith
Nora Dunn

City Clerk's Office
Recording Secretary
Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Pastor Victor Crews of Tucson Independent Baptist Church, after which the pledge of allegiance was presented by the entire assembly.

3. MAYOR AND COUNCIL REPORT

Mayor Walkup announced that city manager's communication number 179, dated March 24, 2003, would be received into and made a part of the record. He also announced that this was the time for members of the mayor and council to report on current events and asked if there were any reports.

A. Emergency Response Training

Council Member Dunbar said on Saturday, ward three would continue with its Certified Emergency Response Training. Ward three is a model project for the entire city; the goal is to teach neighborhoods what to do in case of an emergency response. Training sessions would be held in her office, 8:00 a.m. to 5:00 p.m., for anyone interested in attending.

Mayor Walkup asked if there were any other reports.

B. Town Hall

Vice Mayor Scott announced that her office would be hosting a budget town hall meeting on Wednesday at 7:00 p.m., at the Clements Center. Everyone was welcome to attend and share their suggestions regarding the budget.

C. Mayor's Weight Challenge

Mayor Walkup reported that every Monday the Mayor's Weight Challenge group met at University Medical Center. This was the 8th or 9th week and four weeks remained of the program. He encouraged everyone to keep trying. One thousand people had signed up and about 500 attend the meetings each Monday.

4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 180, dated March 24, 2003, would be received into and made a part of the record and asked for the manager's report.

A. Dan Felix Day

James Keene, city manager, said March 25, 2003, had been designated as "Dan Felix Day" at Hi Corbett Field in honor of the late parks and recreation department director. Special pre-game ceremonies would include Keli McGregor, president of the Colorado Rockies, who would present roses to Mr. Felix's wife in commemoration of the close relationship that was developed with the team. Mr. Felix's son, Jason, who is a graduate student at the University of Montana, will throw out the first pitch. He is a former baseball player and, without casting aspersions on anyone else's abilities, he may be the

first person to get it across the plate this year. Patti Giffney a parks and recreation department employee at the Northwest Neighborhood Center would sing *Circle of Life*. The pre-game ceremonies are set for 12:40 p.m.; the game will be the final spring training game against the World Champion Anaheim Angels.

5. CALL TO THE AUDIENCE, for persons desiring to speak

Mayor Walkup announced that this was the time for any member of the public to address the mayor and council on any issue that was not listed on the agenda. Speakers would be limited to three-minute presentations for a total of 20 minutes. There would also be a call to the audience at the end of the meeting. He said he had received written requests from people wishing to speak and would call on those people in the order in which he received the requests.

A. Clean Air Fiesta

Bill Katzel, said he wished to give a progress report on the Clean Air Fiesta, which was kicked off on Thursday, March 20 by Tucson and Pima County. Races and rallies were held between the city's Sun Tran Buses, Van Tran vans, POVs, skateboards, motorcycles, walkers, runners, and of course his favorite clean air modality, bicycles. All of the races and rallies finished with music, food, fun, facts, and festivities at the city's downtown El Presidio Park. The bicycle won three out of the four races. He thought it should have won the fourth race also if the bus had made a few bus stops and picked up a couple of bicyclists with the two bike racks that each has on board. Maybe next year the rules for the buses will be changed and the bicyclists can win 100% of the races.

At the park festival one of the city's ward six community cyclists was concerned with bicycle theft. Mr. Katzel suggested that bicycle thieves should be hung from the closest oak tree, just as was done in the Old West with horse thieves. That would take care of that problem. He said the ward three council member suggested that he make his proposal before the mayor and council. The city could have zero tolerance for bicycle theft and it would be a deterrent for all theft. The community cyclist suggested that the construction of the guillotine that was started many years ago in front of city hall should be completed. The cyclist said there could be public executions with the guillotine that would revitalize the downtown economy. Popcorn, hot dogs, and ice-cold soda sales alone would rake in millions. Mr. Katzel told him that the French probably would not support that anymore and that public hangings would have the same effect, restore interest in the Old West and would be a cleaner method of reducing bicycle theft.

During rush hour on the 20th, some of Tucson's citizens were protesting the war in Iraq and laid down in one of the main downtown streets. Needless to say, that backed up motorized traffic for miles. The bicyclists cleaned up that problem by simply circumventing the motorized back up by using the city's national award winning Diamondback Bicycle/Pedestrian Bridge and commuted home, pollution free. What a way to end the first day of the city's Clean Air Fiesta. He said he would be sending the council more cleaning tips as the city marches on with its Clean Air Fiesta.

B. Police Actions at Anti-War Demonstrations

Bill Risner, said Saturday before last he was working at his downtown office when he heard a bunch of drums. When he looked out he saw about 20 people marching down the sidewalk. He went outside to see what was going on because of the tremendous police presence. The people went over to the federal building, they were mostly young people and in a really good mood, and he counted just about as many police as individuals. He was talking to a policeman who told him what a success it had been because at the park at Speedway and Stone, 200 people had begun marching, but the police, through intimidation tactics, had been able to successfully whittle the number down to 20. The officer thought that was quite a success.

Later in the week when the bombing started in Iraq, Mr. Risner said he went over to the federal building where he saw a few hundred excellent citizens of the city and that the police had blocked off the traffic in front of the building. There were dozens of officers with their riot gear, hitting their batons on their hands. He talked to a woman whose husband had been a city attorney. She was coming to the demonstration a few blocks away and asked where she could park. The police officer told her she could not go there because everyone that was there was going to be arrested. Mr. Risner said it was interesting. He tried to count the number of police officers, there were dozens of them and their sole purpose seemed to be to intimidate the people who were all quite law abiding and quite sincere about what they were doing.

He went back to his office and pulled out the Arizona Revised Statutes and read the oath the council took, saying that they would affirm to support the Constitution of the United States and the Constitution and Laws of the state of Arizona, and defend them against all enemies. He got out the Arizona Constitution and right at the beginning the state boundaries are given in a one-sentence preamble, then there is a Declaration of Rights. The rights talk about fundamental principles and that the citizens need to look at them again and again and refer back to them. They say the right of the people to peaceably assemble for the common good should never be abridged and every person should freely speak.

Tucson is a city where the mayor and council are in charge of the police. When the police intimidate the citizens, when the police are thrilled that they can keep people away, the council should straighten them out. The council should take charge of the police, tell them that they took an oath that the people of the community who have a dispute and can peaceably go and assemble and speak their minds are not going to be intimidated, because the council will protect their rights. The council took that oath and Mr. Risner said on the two instances that he mentioned the council had failed.

C. Alternate Budget

Richard Cook, said he appreciated Mr. Risner's speech and he agreed. He went on to say that he knew an alternative budget was presented by the Democrats on the council and asked where it was.

Mayor Walkup asked if anyone else wished to address the council. There was no one.

6. CONSENT AGENDA – ITEMS A THROUGH G

Mayor Walkup announced that the city manager's recommendations on the consent agenda items would be received into and made a part of the record. He asked the city clerk to read the consent agenda items.

A. PARKS AND RECREATION: RENAMING NORTH CENTRAL DISTRICT PARK TO RIO VISTA NATURAL RESOURCE PARK

- (1) Report from City Manager MARCH24-03-174 W3
- (2) Resolution No. 19541 relating to Parks and Recreation; authorizing and approving renaming North Central District park to "Rio Vista Natural Resource Park"; and declaring an emergency.

B. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY AND TUCSON UNIFIED SCHOOL DISTRICT FOR THE OLD PASCUA NEIGHBORHOOD REINVESTMENT PROJECT

- (1) Report from City Manager MARCH24-03-173 W3
- (2) Resolution No. 19543 relating to community development; approving and authorizing execution of Intergovernmental Agreement with Pima County and Tucson Unified School District (TUSD) for the Old Pascua Neighborhood Reinvestment Project; and declaring an emergency.

* C. REAL PROPERTY: ACQUISITION OF LAND FOR THE CONSTRUCTION OF ENTRANCE AND RECYCLING FACILITIES FOR THE LOST REALES LANDFILL

- (1) Report from City Manager MARCH24-03-181 CITY-WIDE
- (2) Resolution No. 19545 relating to real property; authorizing the City Manager to acquire by negotiation, and the City Attorney to condemn if necessary, certain real property for entrance/recycling facilities for Los Reales Landfill; and declaring an emergency.

D. COMMUNITY SERVICES: SUBMISSION OF THE FISCAL YEAR 2004 LOW-RENT PUBLIC HOUSING PROGRAM OPERATING SUBSIDY REQUEST

- (1) Report from City Manager MARCH24-03-182 CITY-WIDE
- (2) Resolution No. 19546 relating to community services; approving and authorizing submission of the Fiscal Year 2004 Low-Rent Public Housing Operating Subsidy Request to the United States Department of Housing and Urban Development (HUD); and declaring an emergency.

** E. ANNEXATION: VALENCIA/CRAYCROFT ANNEXATION DISTRICT

- (1) Report from City Manager MARCH24-03-171 W5 and OUTSIDE

*See page 6

**Continued to April 7, 2003

- (2) Ordinance No. 9822 relating to annexation; extending and increasing the corporate limits of the City of Tucson, Pima County, Arizona pursuant to the provisions of Title 9, Chapter 4, Arizona Revised Statutes, by annexing thereto certain portions of Section 12, T. 15 S., R. 14., G. & S.R.B. & M., Pima County, Arizona, more particularly described in the body of this ordinance; and declaring an emergency.

F. FINANCE: CONTINGENCY FUND TRANSFER FOR SENIOR SOFTBALL

- (1) Report from City Manager MARCH24-03-183 W1
- (2) Resolution No. 19547 relating to finance; approving and authorizing the transfer of One Thousand Five Hundred Dollars (\$1,500) from the Contingency Fund to Organization 001-183-1838-268, for the Tucson Senior Softball League; and declaring an emergency.

* G. PARKS 7 RECREATION: APPROVAL OF A USE AGREEMENT WITH THE TUCSON CONQUISTADORES FOR THE FIRST TEE PROGRAM AT THE TRINI ALVAREZ-EL RIO GOLF COURSE

- (1) Report from City Manager MARCH24-03-186 City-Wide

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Council Member West, that consent agenda items A through G, with the exception of items C, E, and G, be passed and adopted and the proper action taken.

Upon roll call, the results were:

Aye:	Council Members Ibarra, West, Dunbar, Leal, and Ronstadt; Vice Mayor Scott and Mayor Walkup
Nay:	None
Absent/Excused:	None

Consent agenda items A through G, with the exception of items C, E, and G, were declared passed and adopted by a roll call vote of 7 to 0.

6. **CONSENT AGENDA – ITEM C**

C. REAL PROPERTY: ACQUISITION OF LAND FOR THE CONSTRUCTION OF ENTRANCE AND RECYCLING FACILITIES FOR THE LOST REALES LANDFILL

Resolution No. 19545

Relating to real property; authorizing the City Manager to acquire by negotiation, and the City Attorney to condemn if necessary, certain real property for entrance/recycling facilities for Los Reales Landfill; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

Vice Mayor Scott said she asked that this item be removed from the consent agenda. She was interested in seeing what the public participation is on some of these things. The city has a solid waste committee and she wondered if they had a chance to look at this item.

Eliseo Garza, solid waste department director, said the solid waste advisory committee had not reviewed the item. It was pretty much an operational item that staff wanted to bring to the council. Staff had briefed all of the council members last year and indicated that it would be coming to the council, but the committee had not seen the proposal.

Vice Mayor Scott said there was a question of whether or not the construction is designed to fit the needs or if it is something that seems to be a long-range plan and the city is trying to get ahead. She asked what was the purpose of doing the project at this time. What was the overall plan?

Mr. Garza said a master plan had been developed for Los Reales that is designed to allow its capacity to be maximized to ensure life at the site for a number of years versus an alternative of building another site, which would be farther away and would, in staff's estimation, cost about \$7 million more per year, once it is opened, in the form of transportation and landfill costs. Staff's major concern is that a lot of new home development is already occurring immediately to the north of the landfill. The subject parcels are needed to expand the entrance facilities, the scales, and then any additional facilities that may be needed, such as MURF and/or composting facilities, et cetera. It is also necessary to capture the stormwater that runs to the north of the landfill, so a retention basin has to be built on the north side. If the city is unable to acquire the subject property, potentially homes could be built 150 feet away from the waste footprint, based on where the new cells are located at Los Reales. That is very close and would not allow staff to control the stormwater if they do not have the subject parcel, nor would it allow the latitude to reroute the road, which needs to be done. The new cell construction will also be in the existing location of the entrance facilities. By building the new cells the facilities have to be put someplace else and there is no place else other than close to the Interstate, Los Reales Road, and Craycroft because that is the most logical place for the trucks to roll in. There are a lot of reasons the subject parcels need to be acquired at this time, the main one being that they may not be available in the future.

Vice Mayor Scott asked if any programs or projects had been cut to generate the kind of money, \$1.8 million, that was needed to buy the property. She asked if any other program or environmental cleanup was jeopardized.

Mr. Garza said no, the funding for the project is a result of bond funds that were left from the city's cell two construction. The city was able to save about a million dollars with the cell two construction project because staff had to borrow dirt as part of their daily operations and that borrowed dirt was closest, in the cell two, when they were filling cell one. In addition, a very favorable bid came in for the project that allowed them to come significantly under budget. He said the acquisition funds are bond funds. They were reviewed and approved by the bond oversight committee.

Vice Mayor Scott said she appreciated that and asked if the subject proposal was part of an overall plan that fits together with a possible merge solid waste might be contemplating with the environmental management department. That is a department solid waste may be merging with and she wondered if Mr. Garza was in contact with them so that this project is in harmony and kind of an overall plan.

Mr. Garza said environmental management operates the groundwater remediation system at Los Reales and his department works very closely with them with respect to how the master plan would affect any of those systems at Los Reales.

Vice Mayor Scott said she really appreciated Mr. Garza's answers. Her questions concerned things that a lot of people are concerned about when the city talks about other matters relating to the solid waste department and the more the public knows about what staff is doing and what their plans are the more informed they can be.

It was moved by Vice Mayor Scott, seconded by Council Member Ibarra, that resolution no. 19545 be passed and adopted.

Mayor Walkup asked if there was any further discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Resolution no. 19545 was declared passed and adopted by a roll call vote of 7 to 0.

7. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced that city manager's communication number 172, dated March 24, 2003, would be received into and made a part of the record. He asked the city clerk to read the liquor license agenda.

Special Event(s)

- | | |
|--|--|
| (1) TUCSON BREAKFAST LIONS CLUB
4823 S. 6th Avenue
Applicant: Raymond J. McKee
City #T021-03, Ward 5
Date of Event: April 4, 2003
April 5, 2003 | <u>Staff Recommendation</u>
Police: In Compliance
DSD: In Compliance
Parks & Rec: In Compliance |
| (2) FOX TUCSON THEATRE FOUNDATION
134 S. 5th Avenue
Applicant: Herb R. Stratford
City #T022-03, Ward 6
Date of Event: April 4, 2003 | <u>Staff Recommendation</u>
Police: In Compliance
DSD: In Compliance |

- (3) REALTO FOUNDATION
318 E. Congress
Applicant: Jeb B. Schoonover
City #T023-03, Ward 6
Date of Event: April 4, 2003

Staff Recommendation

Police: In Compliance
DSD: In Compliance

Extension of Premises

- (1) CHINA COAST
2544 S. Kolb Road
Applicant: Junting Lei
#EP07-03, Ward 4
Type: Permanent

Staff Recommendation

Police: In Compliance City
DSD: In Compliance

- (2) KICKSTART GRILL
8987 E. Tanque Verde Rd, Suite 335
Applicant: John W. Fahlberg
City #EP14-03, Ward 2
Date of Event: April 4, 2003
April 19, 2003
May 2, 2003
Type: Temporary

Staff Recommendation

Police: In Compliance
DSD: In Compliance

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Council Member West, that liquor license city applications numbers T021-03; T022-03; T023-03; EP07-03; and EP14-03, be forwarded to the state department of liquor licenses and control with a recommendation of approval.

8. TUCSON CODE: AMENDING (CHAPTER 22) RELATING TO CITY EMPLOYEE PENSIONS, RETIREMENT AND GROUP INSURANCE – PROVIDING AN EARLY RETIREMENT OPTION AND RETIREMENT INCENTIVE OPTIONS FOR TUCSON SUPPLEMENTAL RETIREMENT SYSTEM MEMBERS

Mayor Walkup announced that city manager's communication number 178, dated March 24, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9826 by number and title only.

Ordinance No. 9826

Relating to pensions, retirement and group insurance; providing a 2003 early retirement option by amending the Tucson Code, Chapter 22, Pensions Retirement and Group Insurance, Article III, Tucson Supplemental Retirement System by amending Section 22-50 Early Retirement Option; providing retirement incentives; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Dunbar, seconded by Council Member Leal, that ordinance no. 9826 be passed and adopted.

Mayor Walkup asked if there was any discussion.

Vice Mayor Scott asked what funding source would be used to pay for this program. Was it coming from the pension plan, the general fund, or what?

Scott Douthitt, finance department, said it was a combination of both. The repayment would either be through earnings of the pension system, or through contributions from the general fund, or whatever the affected fund would happen to be. It did not necessarily have to be the general fund.

Mayor Walkup asked if there were any additional comments. There were none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Ordinance no. 9826 was declared passed and adopted by a roll call vote of 7 to 0.

9. INTERGOVERNMENTAL AGREEMENT: WITH MULTIPLE PARTIES FOR MANAGED IN-CHANNEL RECHARGE OF EFFLUENT IN THE SANTA CRUZ RIVER CHANNEL

Mayor Walkup announced that city manager's communication number 175, dated March 24, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution no. 19542 by number and title only.

Resolution No. 19542

Relating to water; approving and authorizing the Intergovernmental Agreement Regarding Permitting and Operating Managed In-Channel Recharge of Effluent in the Santa Cruz River Channel; and declaring an emergency.

It was moved by Council Member West, seconded by Council Member Dunbar, that resolution no. 19542 be passed and adopted.

Mayor Walkup asked if there was any discussion.

Council Member West said she just noticed that there were \$3.6 million in the city's capital improvement program for recovering 2,500 acre feet annually of effluent water stored beneath the Santa Cruz Channel. With the increase and use of reclaimed water, she commended the staff for working on the subject agreement. She knew it had been difficult and there were some issues regarding recovery that they will have to resolve. She knew they would do that and she congratulated them. She was pleased to make the motion on this item.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Resolution no. 19542 was declared passed and adopted by a roll call vote of 7 to 0.

10. SOLID WASTE MANAGEMENT: PROPOSED FISCAL YEAR 2003 DISPOSAL RATES AT LOS REALES LANDFILL

Mayor Walkup announced that city manager's communication number 177, dated March 24, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution no. 19544 by number and title only.

Resolution No. 19544

Relating to solid waste management and finance; approving the addition of a new Section 4.7 ("Credit System Customer Rates") to the Director of Solid Waste Management's charges and fees for the City's collection, recycling, and disposal of refuse, and ancillary services; making new Section 4.7 effective upon passage and adoption; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

Vice Mayor Scott noted that the city requires a deposit in order to get the service and asked if this proposal was a way to start getting a fee and how would the city collect it. Would it be a part of the water bill and how much would it cost?

Eliseo Garza, solid waste director, said that item is currently in the code and it is not subject to change. He said the proposal is not any prelude to a fee. The city has deposit requirements for commercial customers who want to establish credit at the landfill, or want to establish credit for commercial service. The department asks for deposits sometimes on new accounts.

Vice Mayor Scott asked if the entire attachment referred to commercial only. It did not indicate that, which is why she questioned it.

Mr. Garza said the entire attachment was before the council, but the only section that was affected was the tier grades for landfill disposal for customers that use the landfill. None of the others were being affected, but they had to be included as part of the council's information.

Vice Mayor Scott noted that page 2 of 18, under the service initiation fee, says that each customer of solid waste that is served by the city shall be assessed a service

initiation fee of five dollars at the time of application for garbage service and that the fee will be billed. She said it looked like a five-dollar startup fee and asked if it pertained to commercial or residential customers. It only says each customer shall be asked to pay the five dollars.

Mr. Garza said that is the fee that the city charges commercial customers, even though the material said each customer. Staff needed to clarify that.

Vice Mayor Scott said that was not in the material and that is why she questioned it. The material goes on to say that garbage and recycling service charges are and shall be imposed primarily according to volume and weight and such charges shall not be adjusted for temporary variations in volume. She asked if waste is currently measured. Is it weighed as the solid waste department collects it?

Mr. Garza said that provision did pertain to volume, the size of the dumpsters, for instance. The rates are based on the size of the container that a customer may order. If a customer orders an eight-cubic-yard container, collected twice a week, their fee is different than a four-yard container collected twice a week.

Vice Mayor Scott noted the material said there is a hearing officer for disputes. She asked if that had always been the case. Has there always been a hearing officer in case there is a dispute?

Mr. Garza said the hearing officer process was established this year and it has been used on a couple of occasions. It was established when the council adopted the new rules and regulations last year.

Vice Mayor Scott said she thought it sounded new. Going on to page 4 of 18, avoiding garbage fees and regulations, a sentence midway down says that residents and businesses who are eligible to receive residential garbage, recycling, or green waste services but haul their own garbage, recycling, or green waste to recycling or disposal facilities are not exempt from fees and may not avoid paying fees by hauling their own. She asked Mr. Garza to comment on that.

Mr. Garza said that too had been in the rules since last year. When the council passed the fee for the automated plastic containers that many business have, it was intended that no waivers would be given for those businesses that say they do not generate any garbage at all. The city has many customers who say they do not generate any garbage; they haul their own refuse to the landfill. No dispensation was granted to those businesses because there is no way to keep track of them. They say they do not generate any refuse and therefore should not be billed, but there may be a dumpster in their parking lot or other ways for them to dispose of the refuse.

Vice Mayor Scott said she thought her office had had some comments from businesses that actually do take care of their own waste and wondered about the charge. She said there are as many as four families that share a 350 container and may sometimes require an extra one. Will they be charged if they ask for an additional container?

Mr. Garza said that is currently not being done for residential customers. If a residential customer calls and indicates there is a capacity issue with their 350, the staff works with them on making sure that they are taking advantage of the recycling opportunities that are available to them through the blue barrel program, or the NRCs, et cetera. The times that the city does charge them are when commercial customers ask for additional containers.

Vice Mayor Scott asked if there were any other fees in the section on page 10 of 18, under "additional special charges and fees" that had changed dramatically. She asked if those are simply repetitious, were they new or increased, what exactly were they.

Mr. Garza said none of the fees were changing other than those in section 4.7. The fees were the very same fees that the council adopted last year. There was discussion on the contaminated fee, the pullback fee of the container, and the fees before the council were those very same ones. They have not changed. Section 4.7 pertains to the tiered fee, which is being proposed with resolution no. 19544, and it is the only one in the whole section that was changing.

Vice Mayor Scott said she was concerned because the council had so much in front of it and that is how it looked if someone did not know what they had before. She asked if there was a mechanism whereby someone who makes a deposit on a container could get that deposit back.

Mr. Garza said absolutely. When a customer has fulfilled the terms of their agreement with the city, they get their deposit back.

Vice Mayor Scott asked how the fees are currently being billed.

Mr. Garza said staff uses the Tucson Water billing system and pays a pro rata share for those numbers of bills that are on the system.

Vice Mayor Scott said she did not think the solid waste department had the same number of customers as there are water bills, so the department must pay a percentage of the number of people who receive the bills. She asked if Mr. Garza knew what the charge for that was per year. She said she had heard a number that was a little scary.

Mr. Garza said the solid waste department has less commercial accounts, about four thousand and they pay approximately \$35,000 per year for those four thousand accounts based on the number of times that they are billed per year.

Vice Mayor Scott thanked Mr. Garza and said that was the bulk of her questions.

Mayor Walkup asked if there were any other comments.

Benny Young, assistant city manager, said he did not think staff had done a good job of making their recommendation clear. He said the only thing they were recommending be changed by the subject resolution was the tipping fee at the landfill, to go to a tier tipping fee schedule. Essentially, that would allow the very large haulers to pay a lesser tipping fee than they currently pay. Staff thinks it will induce some of the

major commercial haulers to bring their material to the city's landfill rather than take it out of the county, to Pinal County, for example, which waste management does occasionally. It is an incentive program aimed at generating additional revenue for the solid waste program and for the general fund. The only thing that was recommended for change by the subject resolution was section 4.7 of the code. Everything else is already in place.

Mayor Walkup asked if there was any further discussion.

Council Member Leal said when the council discussed item C, which they pulled off of the consent agenda, they talked about the intention and need to maximize the life of the landfill because as soon as the city has to ship from Los Reales, when it is full, its costs will go up by \$7 million a year. If private sector haulers are not using the city's landfill because they own their own landfills, in Pinal County or in other places, then it seemed to him the city might be cutting off its nose to spite its face. For the short-term gain of subsidized tipping fees they may be setting themselves up to pay serious costs in the future by nipping in the bud the life span of the landfill. He said there were some things it would certainly be helpful to know, for instance, what does it cost the private companies per ton to haul their materials someplace else. He knew that had been discussed for some time, but during that period of time fuel costs have gone up dramatically. It may be that if fuel costs continue to rise the private companies would come to the city even if its fees were not tiered.

Secondly, the council and staff have seen, with water for example, that when people who bought a lot got special rates that were subsidized by everyone who used a little bit, they really did not have much of an incentive to conserve because they were in an artificial reality of cheap subsidized rates. They did not have to get rid of grass; they did not have to make sure the sprinklers did not hit the streets. Water was cheaper then because everyone else paid for it.

The private sector hauls about two-thirds of the commercial waste stream and the commercial waste stream has some of the highest-grade recyclable material. If the city artificially subsidizes them, he was afraid that would keep them in a position to where promulgating recycling of the commercial waste stream would be forestalled into the distant future and that has negative environmental consequences. At the same time there may be negative fiscal consequences to the city in shortening the life of the landfill by having private haulers fill the landfill, which it created for itself, prematurely while they are saving the length of their own landfills someplace else.

For those reasons, Council Member Leal had serious reservations about the proposal. He did not know that staff could say how much it costs the private companies to haul a ton to their landfill because there is no way those companies would tell, although they could probably figure it out because they have the same equipment and expenses. He asked if the change in the increase in fuel costs had been factored in. He said the tipping fee to the commercial haulers is about half of what others will be paying.

Mr. Garza said in looking at the incentive rate and the proposed tier rate staff did very much take into account Council Member Leal's point about preserving landfill space. The proposed rate is not being promoted past a two-year window for council's consideration as part of the 2005 budget process for the very reasons Council Member Leal articulated. Staff does want to preserve the landfill space. When an analysis was

done of the potential amount of tonnage that is available for disposal from the Tucson community with respect to what the private companies haul, staff anticipates that the impact to the landfill life will be no more than a six-month period.

When taking into account the permitted space the city already has, that is 19 years of permitted space within the existing pits; when taking into account the additional expansion that the master plan is looking toward, that gives an additional life of Los Reales of over 60 years. A six-month period is not a lot, but in addition to that, it was important to note that very recently the city got permission from the Arizona Department of Environmental Quality to start using tarps for daily cover. That is a permissible alternative daily cover that many landfill operators are allowed to use. By using tarps, the amount of cover soil that is put on the waste is decreased substantially, which maximizes air space. By using less soil more space is created and the potential additional waste the city will get from the private companies will equal what was used as air space before the alternative daily cover, so it is a wash.

Another important point was that one of the reasons this proposal was being made, as was indicated, is the potential revenue increase that the city would get in a short amount of time. That potential revenue is \$1.2 million for next fiscal year, which is already in the city manager's budget, and is the same for the following fiscal year. For the \$2.4 million staff estimates that the cost to bury the waste, including the cell costs, the operating costs, et cetera, is only about \$560,000, so the city gets a greater return in revenue over that short period of time that it otherwise would not get.

James Keene, city manager, said in his view this item would not be on the council's agenda if the city were not dealing with an \$81 million budget deficit over the next three years. In fact, when staff first brought the idea forward he held off on it because he did not want to bring it to the council until they discussed the budget situation. He shared the concern about wanting to take a very long-term view over the next 50 years or so. Future landfill space clearly has value. He did not think there was any reason for the council to act on this proposal, it was a kind of triage decision in comparison to other service cuts, or revenues that could take place over the next year or two. If for any reason the council was feeling some discomfort in acting in that regard, they could keep that in mind, but there was clearly a need to do that by the time the budget is adopted, one way or the other.

Council Member Leal said he thought Mr. Garza's answers were pretty solid regarding the tarp, the differential of the space with the tarp, the volumes in question in that it is for a two year period, and the difference between what it costs and what the city nets out of it, et cetera. He thought he had gotten real answers and he was comfortable with them. Having said that, one additional question emerged and maybe the staff was already dealing with it. He asked if the commercial waste stream had the highest grade material and the city is going to have control at the end of a greater part of the waste stream than it currently has through its own hauling. He hoped staff would try to do some additional recycling on-site in terms of sorting to separate out some of the material that is recyclable and not just put it in the landfill.

Mr. Garza said Council Member Leal was right about the potential of the commercial waste stream having a lot of material that can be diverted. Staff has already begun to do that through the NRCs with the small businesses. They have begun to look

at businesses that generate large quantities of cardboard, for instance, and have begun to deal with them by offering them their own recycling bins at 50% off the regular rate, which gives them an incentive to recycle more of those materials. Staff is also looking at a routing scheme so that they can begin to do high-grade loads from the businesses that have a lot of the types of materials that have high commodity values. They can be captured in those routes by selectively collecting the dumpsters that have the high-grade materials and extracting them from disposal. Last week he mentioned that the enhanced brush/bulky program would allow staff to offer an incentive, which would have to come back to the mayor and council, on a green waste disposal at Los Reales by lowering the fee the city used to have. It used to be \$14, and the city would get a lot more influx and would be able to contract for the mulching of that and divert about 20,000 tons of material.

Council Member Leal said he knew what the city was doing and what it could do. He knew what was being done with the waste stream the city controls, but he wanted to know what was going to be done with the other commercial stuff. Would it be integrated into any of the existing programs? Was the city going to try to enhance commercial recycling as a result of controlling the additional waste stream?

Mr. Garza said invariably, what that boils down to is the market control of those potential customers that are out there. The city is in a free market economy with respect to commercial collection. What staff has tried to do with the private companies, and those companies are actually looking at it themselves, is figure out how to maximize the diversion with their customers whereby they can divert additional materials.

Council Member Leal said it did not seem to matter about the customers because the private companies will deliver the material to the city at the landfill. He said it did not sound like staff was going to try to do any enhanced commercial recycling of that material. They were just going to landfill it.

Mr. Keene said that was his understanding. The subject proposal as he understood did not include an operation where the city would set up and do some sort of separation at the landfill when the material is received from the private haulers in any noticeably different way than is currently being done.

Council Member Leal asked if there were not some people sorting cardboard at the landfill.

Mr. Garza said that was done for five months and the total was 20 tons. A very small amount can be done on site. There is a potential of several thousand tons of material that needs to be captured at the source, which is why he was talking about giving incentives to those customers to separate the materials at the point they are generated. Staff has talked to businesses and there is a lot of that already occurring with respect to the large supermarkets and some of the larger stores in malls that get a lot of cardboard. They bale it, ship it, and deal with it themselves.

Council Member Leal said he thought he would support the proposed resolution because Mr. Garza's answers were valid, but as part of the motion, although the resolution is for two years, he would like staff to come back to the council in a year with some numbers in terms of what volumes were obtained, the city's costs, and what did it net, et cetera.

Mayor Walkup asked if there was any further discussion.

Council Member West said she thought most of her questions and concerns had been voiced by other council members. She sent an e-mail to everyone on Friday. She said on the one hand citizens are being encouraged to recycle, and on the other, the city is saying it will take more waste. She had some real difficulty with that dichotomy. She wished the rate structure could somehow be changed so that the commercial haulers could be given some incentive to recycle. She asked if there was any option or any way to do that. She asked if that might be too difficult. She understood that it was not going to be something the council would consider.

Mr. Garza said staff has been strategizing about how best to do that. In the CFP, for instance, a separation facility had been included that private haulers, the large ones as well as the self-haulers, could use so that wood, aluminum, metals, and other materials that are reusable and recyclable from the landfill could be separated. That project is not funded. It is something that the city needs to work on and it requires a lot of coordination with private haulers and the business community. Staff had started the strategy with small businesses, businesses that use plastic containers, with a blue barrel pilot that works really well. With the Tucson Recycles Program, the number of small businesses that are recycling has increased dramatically. Staff wants to expand that and the greatest challenge is commercial customers that the city does not collect from. That is something they need to continue to work on to capture the potential recyclable materials that are there.

Council Member West said the problem with commercial is the many kinds of recyclable materials, from shoe stores, to bars, et cetera. She would really like to see the city do more of that kind of thing and she thought Council Member Leal was right that this item needs to come back to the council in a year. She asked what the solid waste advisory committee is charged with. What did the council charge them to do?

Mr. Garza said the solid waste advisory committee serves as a sounding board for staff on new ideas and programs they may want to propose to the mayor and council. The committee looks at policy recommendations that staff is making to the mayor and council from a citizen and business perspective. He said the council has appointed several business people to the committee and they look at recommendations from that perspective. They have been very helpful to staff regarding the items that they have reviewed in making recommendations on changes to policies that staff has brought to the mayor and council with respect to programs and services. He reiterated that the committee's main charge is to review policy changes and make recommendations. They recently forwarded a memorandum to the mayor and council on the brush/bulky fee. That has been their charge.

Council Member West asked if the committee had reviewed the subject proposal.

Mr. Garza said no, they had not reviewed the subject proposal and if the council wanted to direct it to the committee, the earliest opportunity would be April 3, 2003. The proposal could be placed on their agenda and then brought back to the council if that was their desire.

Council Member West said she would feel more comfortable if the committee had had an opportunity to review the subject proposal. She did not think that would delay its implementation. She was inclined to support it, but she would like to hear what the committee has to say on it.

Mayor Walkup asked if Council Member West wished to put her comments in the form of a motion.

It was moved by Council Member West, seconded by Council Member Leal, to continue this item to the mayor and council meeting of April 7, 2003, so that the solid waste advisory committee could review the proposal.

Mayor Walkup asked if there was any discussion.

Council Member Leal said he assumed it was Council Member West's wish, but to make it explicit, he would like to add the caveat that aside from the structure of the proposal, maybe the committee would have some ideas about how to hasten commercial recycling during the first year or two that the proposal is in existence.

Council Member West said it seemed to her that that was a separate issue.

Council Member Leal said the council should have some idea.

Council Member West said she was willing to include Council Member Leal's caveat as a part of the motion, but she did see it as a separate issue.

Mayor Walkup asked if there was any further discussion.

Vice Mayor Scott said if there was any way to do outreach to the small businesses, such as the Chamber of Commerce, and the Metropolitan Pima Alliance, she would like to have their comments and thoughts.

Council Member West asked if staff, when they submit this item to the solid waste advisory committee, would explain what the goal is, as they had done for the council at this meeting. From reading the materials, until Mr. Young articulated the goal she had no idea where it was going and she was a little disturbed. The subject proposal seemed to run counter to the council's present policy and she thought that was something the staff needed to clarify with the committee.

The motion to continue this item to the mayor and council meeting of April 7, 2003, so that the solid waste advisory committee has a chance to review the proposal carried by a voice vote of 7 to 0.

11. PUBLIC HEARING: CITY OF TUCSON AND PIMA COUNTY 2003 PUBLIC HOUSING AGENCY'S ANNUAL PLAN

Mayor Walkup announced that city manager's communication number 184, dated March 24, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing on the city of Tucson's Public Housing Annual Plan. He asked for staff's presentation.

Emily Nottingham, community services director, said annually the city of Tucson acting as a public housing authority, must submit to the Department of Housing and Urban Development, an annual plan. Prior to this meeting staff held at least three meetings with clients to discuss the plan, as well as with a variety of stakeholders. This year staff was recommending two changes from the current plan. The first is to the preferences in the Section 8 Program, regarding who is admitted to the program. Currently there is a preference for working families and although staff supports that preference they have found that it is in conflict with the Section 8 requirements to target at least 75% of the city's assistance to people who are extremely low income, those below 30% of the median. Staff was recommending that that preference be dropped.

The second change is that HUD requires a public housing or Section 8 client be appointed to every board of commissioners' of public housing authorities. While staff has believed that the mayor and council were exempt from that provision, HUD has informed that they are not. Beginning July 1, 2003, a policy will be adopted whereby when the council acts formally as the board of commissioners of the public housing authority, which is a few times each year, they will be joined by a client. Staff will hold an election process by which they would then nominate a name to the mayor to appoint to the board. Those were the two changes for this year.

Mayor Walkup announced that the public hearing was scheduled to last for no more than one hour and speakers would be limited to five-minute presentations. He asked if anyone in the audience wished to address the council. There was no one.

It was moved by Council Member Ibarra, seconded by Council Member West, and carried by a voice vote of 6 to 0 (Council Member Ronstadt absent/excused), to close the public hearing.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Leal, seconded by Vice Mayor Scott, to approve the city manager's recommendation to direct staff to return with a resolution adopting the FY2003-2004 Public Housing Agency Plan.

Mayor Walkup asked if there was any discussion.

Council Member Leal asked why the Section 8 client that is to be appointed to the board of commissioners' of public housing authorities was not a mayor and council appointment. Why was it a mayor's appointment?

Ms. Nottingham said she believed it is a mayoral appointment by state statute. Staff would review that with the city attorney before bringing it back to the council.

Mayor Walkup asked if there was any further discussion. There was none.

The motion carried by a voice vote of 6 to 0 (Council Member Ronstadt absent/excused).

12. PUBLIC HEARING: APPEAL TO THE FLOODPLAIN BOARD OF THE DECISION OF THE CITY ENGINEER – VARIANCE TO CITY OF TUCSON FLOODPLAIN ORDINANCE FOR CABEZON EQUESTRIAN CENTER, 4885 S. HOUGHTON ROAD

Mayor Walkup announced that city manager's communication number 176, dated March 24, 2003, would be received into and made a part of the record. He asked the city clerk to read the order of the appeal.

Kathleen S. Detrick, city clerk, announced that the mayor and council were serving as the city's floodplain board in hearing the appeal of the decision of the city engineer. Before beginning the appeal, the city attorney would summarize the procedural question presented in this case.

Michael House, city attorney, advised that this was a request for variances from city floodplain regulations that establish the minimum level above the base flood elevation for construction in the floodplain and the minimum distance from the bank that is necessary to protect against erosion hazards. In order to grant the variance the mayor and council must find that the request meets all of the following five criteria: 1) There is a showing of good and sufficient cause; 2) The requested variance is the minimum necessary considering the flood hazard to afford relief; 3) The failure to grant the variance would result in exceptional hardship; 4) The granting of the variance will not create a danger or hazard to life or property in the area, or result in increased flood heights, additional threats to public safety, extraordinary public expense, the creation of a nuisance, or the victimization or fraud upon the public, and the variance is not in conflict with other city ordinances or regulations; and 5) There are special circumstances such as size, shape, topography, location or surroundings of the property that would cause the strict application of the regulations to deprive the property of privileges enjoyed by similar property in the floodplain and erosion hazard areas. He noted that the language of the last criteria was comparable to the language that applies to variances of the zoning regulations. The courts have strictly construed this language to require that the special circumstances originate from the property and are not self imposed by actions of the property owner.

Finally, he noted that a floodplain variance is different from a zoning variance in two important ways. One, an erroneous floodplain variance may allow construction of a structure that is a real public safety hazard and that could result in future liability for the city. Two, floodplain variances are subject to review by the Federal Emergency Management Agency (FEMA). If FEMA determines that the variance should not have been granted, it might take actions that affect the city's future participation in the national flood insurance program.

Ms. Detrick announced that development services would present a report and summary of the case.

Ernie Duarte, development services director, said as Mr. House pointed out the case before the council involved a variance request to the city of Tucson's Floodplain Ordinance. The Cabezon Equestrian Center is located at 4885 S. Houghton Road. There is a commercial horse boarding and training facility along the banks of the Pantano Wash. Photographs of the stable were contained in the mayor and council packets. It is an extensive structure; one that is not typically erected by a homeowner or business owner unless they are qualified commercial contractors. Qualified commercial contractors are well aware of the process associated with commercial development. The rules involve plan check, permitting, and inspections.

In this case, the rules were clearly not followed and the structure was erected without the benefit of development review and permitting. Consequently, absent that development review and permitting process there were certain requirements related to development in the floodplain that cannot be met, specifically, the finished floor elevation of the barn as well as the distance the barn must be from the edge of the Pantano Wash.

Staff and the city manager recommend denial of the variance request. Granting the variances goes counter to the way that the city of Tucson has managed its floodplains in the past, management that has garnered the city of Tucson a favorable community rating with FEMA. Additionally, the mayor and council appointed Stormwater Technical Advisory Committee (STAC) also recommends denying the variance request. If the contractor that erected the stable followed the customary development review procedures, the subject request would not be before the council. Again, staff, the city manager, and STAC recommend denial of the variance request.

Ms. Detrick advised that the order of the appeal would be first, the appellant, Kent Delph and the property owner, Frank Santana; second, representatives from an affected neighborhood who wish to speak in support of the recommendation from development services; then response from city staff, if any. The parties may use ten minutes either in direct address to the council or in rebuttal, but the time limit is ten minutes. Following those presentations the public hearing on the process would be held during which time the mayor and council would hear testimony from any member of the public. After the public hearing the mayor and council may permit rebuttal as appropriate. They could direct any questions to the parties appearing before them, or other persons who may have relevant information in order to establish the reasons for the decisions. After the presentation, the mayor and council could discuss the case and act upon it. She said the first presentation would be by the appellant, Kent Delph, and the property owner, Frank Santana, with a time limit of ten minutes.

Kent Delph, president of Delph Engineer and a water resources engineer, said he works for several floodplain boards in Northern Arizona, so he was somewhat familiar with the regulations. He submitted handouts and said he would talk about them at the end of his presentation. He said he had been in touch with FEMA regarding the community rating issue and granting the requested variance would not affect that rating. He showed an exhibit of the general property and said he thought the two variance requests were clear. One was due to the first floor elevation being a foot and a half lower than the base flood and the second was for a reduction in the 600-foot erosion hazard setback. The property is on the south side of the Pantano Wash at Houghton Road. There are several existing stables in the area, and the subject structure was built in 2000 to replace four structures that had been demolished by wind. At that time he believed the owner went through some building permits, or brought the plans to the city.

To explain about the building being constructed without permits, he said they would have been seeking a variance regardless of that because of the cost to address the variance items. Regarding the first floor variance request, he said the structure is a nonresidential structure. FEMA and most jurisdictions allow property owners to fill out a flood-proofing certificate, which an engineer certifies to show that the flood can flow through it, it is not an issue, and there is no threat to public safety. Once it is certified, it is approved and accepted into the FEMA national flood insurance program. However, the city of Tucson's drainage design manual requires a variance to that to the floodplain board for a nonresidential structure.

Mr. Delph said that approximately a year ago they got a floodplain use permit. The conditions of the permit, after the structure was built, were to raise the structure two feet and provide bank protection or some sort of erosion hazard protection along the Pantano Wash. Those two conditions would entail tearing the structure down and rebuilding it and doing the bank protection. Regarding the elevation issue, he said it was his view that FEMA clearly has no issue with the elevation being that it is a nonresidential structure and also that the variance is allowed by the city's design code.

Regarding the erosion hazard setback, which is a more critical issue, Mr. Delph said the first item almost passed the stormwater technical advisory committee. If a detailed engineering study is not performed, the minimal setback to the structure shall be as indicated in table one, or from appropriate formulas from the standard manual, which calculates to 600 feet. He said the subject property is approximately 400 feet from the bank with the existing structure set at 280 feet. To provide that setback the owner could not build on the property, which currently has all sorts of stables that have been grandfathered. To meet the erosion protection criteria two options existed that an engineer would be comfortable with, which were bank protecting the Pantano Wash for approximately 1,500 linear feet, or constructing an almost 20 foot slurry cut-off wall. That would involve using slurry trench technology where a trench is dug, back filled with water and concrete, or something is poured in, and while the water held the soil out the trench could be built. The construction costs to address the two items are estimated to be 100,000, minimum, to \$200,000.

The other option to justify a variance was a detailed engineering study. According to the city of Tucson manual the only real detailed engineering study is a sediment transport model where the FEMA model is used and another model is piggybacked on that, which allows a person to model the sediment transport between cross sections. The FEMA model is 25 years old, so the applicant would have to fly the river, and that study would be costly. That led him to look at some aerial photographs. The Pima County Code will allow consideration of aerial photographs to justify variances. The city of Tucson typically requires the sediment transport manual. The photos that he had were from 1974, taken before any development occurred on the property. He had a photo from 1999, which would have been after the peak events in 1983 and 1993 and the only erosion that he could certify was approximately 50 feet east of the structure. That indicated to him that there might not be a potential of 600 feet. In addition, at the STAC meeting no aerial photos were presented by staff that showed any erosion on the order of 280 feet, which is the existing setback.

Mr. Delph said he would go through the variance conditions mentioned by the city attorney, but first, staff had indicated the construction costs or tearing down the building. The fact that the structure is a horse stable, which is actually a good floodplain use as opposed to condominiums or a subdivision and which is why he was involved, he felt were relevant conditions, but city staff has indicated they should not be considered.

Regarding item a., given sufficient cause, the applicant has demonstrated that FEMA will accept the first nonresidential elevation, below the first floor, and they have also demonstrated that there is no aerial photo documentation of any erosion on the order of 600 feet. Regarding item b., the requirement that the variance is the minimum necessary considering the flood hazard to afford relief, he said it is the minimum necessary short of spending \$100,000 to \$300,000. Regarding item c., that the failure to

grant the variance would result in exceptional hardships to the applicant, he said failure to grant the variance would mean that the applicant would either have to demolish the structure or bank protect the wash.

He emphasized that the building is a stable, not a residential structure. As for item d., that the granting of the variance will not create danger or hazard to life or property in the area, public safety, et cetera, he said the structure replaced four existing structures, so there is no increase in the flood elevations. It is also nonresidential, so it would not damage people's lives. Item e., that special circumstances such as size and shape, topography, location, would cause strict application of the regulations to deprive the property of privileges enjoyed by similar property in the floodplain or erosion hazard areas, he said they have demonstrated some characteristics based on the aerial photography. Horse use is a non-invasive use of a floodplain, so he felt that item was justified.

Referring to the letter he submitted earlier, Mr. Delph said he thought he had addressed different opinions regarding staff's memorandum. The national flood insurance program community rating system is a real concern. He contacted the flood technical coordinator for the community rating system program and he has also talked to people in other flood control districts that he works with such as Navajo County, the cities of Show Low and Holbrook, and the CRS rating is based on standards. Variance decisions are considered, but they do not necessarily have an impact and unless they are a repeated item, they do not affect the CRS. Also, the first variance item is in total compliance with the national flood insurance program and FEMA shows nonresidential flood proofing certificates as a way to deal with these issues. The second floodplain variance item regarding the erosion hazard setback, those are beyond the national flood insurance program, erosion hazard setbacks, and under the CRS program they are considered to be special hazard credits. Currently, the city receives zero credits for their erosion hazard setbacks, therefore, it is not going to be considered a negative if there is no credit for the erosion at this time. He said that was addressed in the third page and it is the actual text from the e-mail from the flood technical coordinator. He asked the owner of the property, Mr. Frank Santana, to clarify some other issues.

Mayor Walkup said they did not have any time remaining.

Mr. Delph said he was told that they had 30 minutes.

Ms. Detrick said the next speaker would be a representative from an affected neighborhood who wished to speak in support of the recommendation from development services. She asked if a representative of affected neighbors wished to speak in support of the recommendation to deny the variances. Seeing no one, she said the public hearing portion of the appeal would proceed. She said she had received one written request from a person who wished to speak and noted that Mr. Santana wished to comment, so she would call on him first. She said the public hearing was limited to one hour and speakers would have five minutes to make their presentations.

Frank Santana said it was hard, having spent a large part of his life in the agricultural city of Ames, Iowa, not to have a love for livestock and that was the genesis of his acquisition of the subject property in the fall of 1999. However, it was in conjunction with the close monitoring of the events that he was reading about in the newspaper relative to Houghton Road, that it was going to be a scenic highway. He and his wife were driving down that road one day and saw that property up for sale at an auction and it was the start of a lifelong dream. He wanted to help beautify Tucson, specifically the Houghton Corridor. The property had a set of 16 to 17 sixty-year-old dilapidated buildings that were not constructed to current requirements and technology. Upon acquiring the property, they planted over 300 trees and part of their desire was to eventually replace every building on the property and build a world class equestrian center to bring Olympic type training of equestrian riders to Tucson.

Fortuitously, an event occurred during the summer of 2000, during the monsoon season, when high winds and significant rain caved in the roofs of four of the buildings, and they collapsed. Again, going back to what he learned in Iowa, he said he did the right thing. He cleaned up the property and decided to build a new structure. He had the plans drawn, he submitted them to the city, paid \$1,500, and the city asked him to go to Stantec, which he did although he had never heard of them. They helped with the process and that cost him another \$800.

During that process, the development staff, during a very friendly and cordial conversation, inquired what the genesis was for the project. He told them that during the storm the roofs had collapsed, the walls fell down, and he wanted to build a new barn. They told him that was a remove and replace project, so he did not need a permit. He accepted that and withdrew his plans. He did not ask for a refund, he let the city keep the money, he had used their time, talked to their people, and then he built the barn. He built one heck of a barn, an Arizona qualified, and certified contractor built the barn. Of the 16 structures on the property, that barn is the safest. It is not a threat to human life nor is it a threat to livestock. He said he was willing to hold the city harmless, he was willing to bear all the risks, no one lives in it except the horses, and horses live in the other 15 barns.

Mr. Santana said he does not use some of the barns for horses because he does not feel they are safe and neither did the building inspector that inspected them. He said he never imagined that building that barn would cause turmoil and he apologized for that. He was just trying to do the right thing and asked for the council's support. The structure is important for more than just the occupation by horses. It has become a community center. He invited the council to visit the barn on Saturday or Sunday and they would see 50 kids with their parents, picnicking and enjoying the structure.

Ms. Detrick said she had received two requests from people who wished to speak, the first being Bill Katzel.

Bill Katzel, said he had a business in Tucson for seven years and he would never open another business in the city limits. It had been an oppressive encounter. As the former regulations' officer of the US Public Health Service he had to learn the sign code regulations and become an expert on the city's regulations in order to preserve and grandfather what already existed. The city wanted to take his marquee down, they wanted to take his 40-foot wine bottle down, and he had to fight tooth and nail. Tucson has a very poor track record for doing the right thing when it comes to small businesses.

Tucson experienced a 150-year flood in 1983. Real estate was washed down into the Rillito, big buildings collapsed. The city got together with the Corps of Engineers and the county and built floodplain restraint barriers, and bicycle and multi use paths, and the problem was under control. He has not seen another flood like the 1983 flood. He remembered the 86-year-old man and his wife that wanted to put a piece of property, an abandoned gas station, back on the tax rolls. The city wanted to tax him with \$16,000 worth of sidewalks. The man lost that battle, he did not have \$16,000, and that piece of property, on Campbell, is still abandoned and under-utilized and not back on the tax rolls. He remembered the woman who cleaned up her act, improved the neighborhood and wanted a liquor license. He said the council should get rid of some of the people who abuse their licenses and put people in who are responsible.

With this item, they were talking about stables and horses. He loves to go along the Santa Cruz and the Rillito and watch the horses and riders in the riverbed. Mr. Santana comes from Iowa, land of the Middle West, land of the free thinkers; people that support projects like this one. Then there are the bureaucrats, quoting five different reasons why this can't be done, and seven different reasons why that can't be done. They should think about the word "can," which is much shorter than "can't". They should find a way of giving Mr. Santana his dream and supporting the community for healthy activities. They should find a way to grant the requested variance.

Ms. Detrick said the final request to speak was from Michael Marks.

Michael Marks, MJM Consulting, said he wanted to reinforce some of the points that had already been made. The subject property has been used as a horse stable for many years, since around 1947. The buildings on the property have not moved and the floodplain boundary has not moved. The buildings have been in the floodplain at about, if not exactly, the same elevation as the existing barn for all that time. There has not been any damage; there is no human habitation and no risk to life. He thought the use is compatible and if the council denied the variance request the solution was not economical, the barn would have to be removed, and the business would not be viable. He asked for the council's support. He thought the barn should remain as is, it is not doing any harm, and the business could continue to operate.

Ms. Detrick said that was all of the written requests she had received and asked if anyone else in the audience wished to address the council. There was no one.

Mayor Walkup asked if there was a motion to close the public hearing.

It was moved by Council Member Leal, seconded by Council Member Ibarra, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup asked the council's pleasure.

Vice Mayor Scott said she believed the subject appeal involved a very clear decision. She said she would support it and asked that her colleagues give it serious consideration and support it completely. She knew some concerns were brought up about the city's floodplain insurance from FEMA, but she thought ample argument had been brought forward that this one variance will probably not play a significant role in any downward adjustment of the rating from FEMA. She thought the arguments were solid on that issue. If they were talking about condominiums or residences then they would be

looking at a very different situation, but she believed the arguments were strong to support the variance request for a beautiful stable that replaced something very old and unsafe. That is the reason the council should go ahead and give Mr. Santana his barn, his people, and his community, and strong support. Asking him to build a levy she thought was too much. His stables are very successful and very popular.

It was moved by Vice Mayor Scott, seconded by Council Member Dunbar, to grant the request for the variance.

Mayor Walkup noted that the recommendation was to deny the request. He asked if Vice Mayor Scott was moving to accept.

Vice Mayor Scott said her motion was to accept.

Mayor Walkup noted staff had advised that if the mayor and council chose to grant the variance, conditions of approval should include requirements that the structure be flood proofed in the manner consistent with FEMA criteria and engineering. He asked if Vice Mayor Scott wanted to include that as part of her motion.

Vice Mayor Scott said no, she thought that would include the very same things the appellant and owner said they should not be required to do. The owner had a footprint of a stable that collapsed; he built a new one on almost exactly the same footprint. She thought it was too much to require that he raise the building a foot and a half higher.

Mayor Walkup asked if there was any further discussion.

Council Member West asked what were the concerns if there were a major flood.

Mr. Duarte said while he recognized that Mr. Delph and Mr. Santana both mentioned that equestrian use in the floodplain is an appropriate use, a concern is that flooding may occur and erode the unprotected stretch of the Pantano Wash and the structure itself, plus its contents, could float downstream. There is a bridge at Houghton where it crosses the Pantano and it could increase potential flooding there. It is not only the inhabitants of the structure, in this case the horses, but the structure itself that posed downstream flooding problems.

Council Member West asked if backwater flooding to the properties upstream from the bridge was a concern.

Mr. Duarte said it was.

Council Member West said she read the e-mail, but she wanted to hear what Mr. Duarte thought the consequences from FEMA would be if the city did not uphold its floodplain ordinances.

Mr. Duarte said it was difficult to say. The city of Tucson has, as mentioned in the communication, enjoyed a favorable community rating from FEMA. The city is currently undergoing an audit by FEMA and it is these types of variance requests and the way the city issues the floodplain use permits that FEMA looks at in its audit. At this point he thought FEMA would make note of the variance and it is possible that given past performance in managing the floodplain the city might be put on notice or some sort of probation.

Council Member West asked if floor elevations were ever submitted for the subject project.

Mr. Duarte said no.

Council Member West asked if the applicant had done any kind of engineering study to prove the points he had made at this hearing.

Mr. Duarte said the extent of the engineering that was provided by Mr. Delph consisted primarily of the aerial photographs that were presented to the mayor and council at this meeting and to the stormwater technical advisory committee.

Council Member West asked if the city had received any documentation from the applicant to demonstrate that there would be no adverse affect on any other properties or to the public.

Mr. Duarte said no.

Council Member West said the city has a professional committee, the stormwater technical advisory committee, that is telling the council that a variance would be inappropriate. She was not going to support the motion because she feels that when the city asks a professional body to serve in an advisory capacity the council needs to pay attention, particularly in a case like this one. She has had some experiences along the Tanque Verde Wash where she has seen a nine-foot erosion, approximately, of a bank that is unprotected. While the subject structure is certainly very attractive and the business is good, she did not feel that she could support the variance because of the questions she just asked. She said she might consider it if the motion included some of the recommended protections, but since those were not a part of the motion, she would vote no.

Mayor Walkup asked if there was further discussion.

Council Member Ibarra asked if Mr. Santana had paid an application fee of \$1,500 and visited Stantec.

Mr. Duarte said he needed to clarify that no building permits were issued for the subject structure. Mr. Santana chose to use the services of an outside plan review consultant, Stantec, to look at the building elements of the structure itself. That is a service the city offers its customers when they are going through the site plan review process and tackling the engineering issues associated with development and the *Land Use Code*. It allows the facilitation of the plan check process to use an outside plan review consultant and the approval of those plans usually coincides with the approval of the site plan. In this particular case, the city did not get approval of a site plan.

Council Member Ibarra asked if the hold harmless clause that Mr. Santana said he would give the city was included in granting the variance request. Would it have any legal standing?

Mr. House said because of the nature of the potential damage that could occur, he did not believe that a hold harmless clause from an individual would be of any value to the city.

Council Member Ibarra said his last question had to do with precedent. He was going to support the motion. It is important in the current economy to help small businesses that are trying to make ends meet. He thought the council had already granted a similar variance request in his ward a few years ago at Grant and the Santa Cruz River. Staff was adamant against allowing development of the area; they fought tooth and nail and he had voted for staff's recommendation in that instance, but the mayor and council approved the variance request. The business is alive and well, bringing in a lot of tax money and is not a problem at all, so to an extent the council had already gone through this process and FEMA did not slap them on the wrist or kick them out of the country. He did not believe the city would be suspended by FEMA in this case and the council should allow Mr. Santana to have his barn so he can get on with his business and the city can get on with its business of collecting tax dollars.

Mayor Walkup said the council members listen to a lot of arguments and things are very clear, black and white, and they can read as well as anyone what the rules say and see what the conditions are. However, events happen that are in a gray area and as Mr. Santana was relating his story the mayor could see exactly how he got in this situation. The stable was there, it blew over or fell over, it is a horse barn. The mayor has driven by it and thought it is not a bad way of occupying that area. He was going to vote for the variance request and a lot of words could be said to make a case for denial, but this is one of those instances where the council is elected to make judgments in gray areas and he was going to vote for the variance. He asked if there was any further discussion.

Council Member Leal asked if the city had kept Mr. Santana's money.

Mr. Duarte said the money went to the outside plan review consultant, which staff and other council members disagreed with.

Council Member Leal said he thought if there is a flood and a building is open on both ends, the water would flow right through. He also thought the horses would get out and if the barn is 268 feet from the bank, the kind of storm that would take out that much ground would take the whole town.

Vice Mayor Scott said she had been informed that the motion should read that the variance was being granted because the requirements had been satisfied.

Mr. Duarte said if the mayor and council granted the variance that would satisfy the engineering and floodplain ordinance portion of the development review process. However, in addition to the development review process, Mr. Santana needs to satisfy *Land Use Code* requirements. He has exceeded the amount of square footage that was destroyed or demolished, so consequently he has exceeded the amount of floor area that is allowed and has a case pending before the board of adjustment as well.

Council Member Leal said no good deed goes unpunished.

Mayor Walkup asked if everyone understood the motion and hearing affirmative answers, called for the vote.

The motion to grant the request for the variance was declared carried by a voice vote of 6 to 1 (Council Member West voting nay).

Recess: 9:16 p.m.

Mayor Walkup announced that the council would stand at recess for five minutes.

RECONVENE: 9:33 p.m.

Present:

José J. Ibarra

Carol W. West

Kathleen Dunbar

Shirley C. Scott

Steve Leal

Fred Ronstadt

Robert E. Walkup

Kathleen S. Detrick

Council Member Ward 1

Council Member Ward 2

Council Member Ward 3

Vice Mayor Ward 4

Council Member Ward 5

Council Member Ward 6

Mayor

City Clerk

13. PUBLIC HEARING: *LAND USE CODE (LUC)* AMENDMENT - LARGE RETAIL ESTABLISHMENTS ("BIG BOX" REGULATIONS)

Mayor Walkup announced that city manager's communication number 187, dated March 24, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing with respect to a proposed amendment to the *Land Use Code* big box regulations and asked for staff's presentation.

Albert Elias, comprehensive planning task force director, said the proposed amendment was presented pursuant to direction from mayor and council in January of 2002. At that time there were some changes to the parking criteria that were made to the large retail establishment section of the *Land Use Code*, and the mayor and council directed staff to remand the entire ordinance to the planning commission for their consideration. The planning commission established a big box review subcommittee per that direction consisting of three planning commission members, a member from a neighborhood association and a representative from a consulting firm. That subcommittee worked from March of 2002 through October of 2002, meeting every week and developed the ordinance that was presented to the planning commission, which is really the basis for the proposed staff recommendation.

Regarding the recommendation itself, he said the proposed amendments tried to do three things, one being to clarify the process. Currently, all large retail establishments require a special exception land use review by mayor and council. In the proposed process there are three levels of review, one where it is permitted by right in certain commercial zones, another situation where special exception land uses are reviewed by development services, and a third type of process where special exception land uses are reviewed by the zoning examiner.

The second component of the proposed ordinance involved design criteria that are applicable to all big box sites. Currently there is some design criteria that are applicable to large retail establishments, but what was before the council clearly builds on that. The third part of the ordinance established some additional design criteria that is specifically applicable near residential developments and that does not really exist in the ordinance the way it is being recommended.

Mr. Elias said those were the three main components of the proposed ordinance and the city manager recommends that it be adopted. He wanted to make special note of the participants from the planning commission and the other members of the review committee. They put an incredible amount of time and effort into the recommendation that they generated and he thinks it is a significant piece of work that represented some areas of significant improvement to the ordinance.

Mayor Walkup announced that the public hearing was scheduled to last for no more than one hour, speakers would be limited to five minute presentations and if they could make their presentations in less time it would be appreciated, as more people had requested to speak than could be accommodated in one hour. He said he would call on speakers in the sequence in which he received their requests.

Robert Tomlinson, chair of the planning commission and of the large retail review subcommittee, said the subcommittee met from March to October, weekly, for more than two hours in addition to all of the work and time they spent on their own. They had a fairly robust work schedule and at the end of that time they came up with 40 plus pages of *Land Use Code*. They entirely revamped the code as it was passed in the fall of 1999. At that time, he was also chairing the planning commission, which had asked that the code come back for review and of course, it did. The commission feels that the result of their work is an excellent consensus building document between the developers and retailers and between the neighborhood interests and professional planning staff. They listened to anyone who wanted to come and speak to them, they respected everyone's point of view, and worked very hard to negotiate a document that takes into account most everyone's perspective. Everyone walked away from the table at the end of that time not entirely happy with all aspects of the document, but willing to support it because it achieved the ends that they required.

The subcommittee's recommendation went to the full commission, a motion was made by a member of the subcommittee, and an adverse amendment was made to that motion. Mr. Tomlinson noted, as he did in his transmission as planning commission chair that two subcommittee members, currently serving on the planning commission, voted against the amendment and ultimately voted against the planning commission's recommendation. He spoke specifically about the 500-foot side separation that the planning commission deleted and the subcommittee would like to have put back in.

Mr. Tomlinson said he would speak briefly about the technical aspects of the recommendation. What the committee looked at was a way that those areas of the city that were developmentally friendly or that had the least impact to surrounding land uses would have a more simple approval process. Those areas that have impacts that are more significant on surrounding land uses have a much more stringent oversight by the authorities. The change in the 500-foot side separation comes in under the easiest way to open a large scale retail according to the recommendations in the by right section. The

subcommittee feels that there should be a 500-foot separation from this property to any other residential property or to historic properties. They feel that it is important for the neighborhoods to have that distance. In short, he strongly recommended that the mayor and council accept the recommendation of the subcommittee and of the planning commission, and additionally, that they put the 500-foot side separation back in the "by rights" section of the *Land Use Code*.

If the council was not comfortable with doing that, he asked them to take into account the massive amount of work that the subcommittee has put into this issue and, as his letter as commission chair recommended, ask staff to review all of the commercial land uses in the *Land Use Code* and come back with a recommendation to revamp the entire thing. The subcommittee talked about the problems that a surrounding neighborhood has when an 18 wheeler with a refrigerator unit parks and runs all night long outside of a big box. How is that any different in a building less than 100,000 square feet? He said there really is not any difference. The planning commission asked that all of the commercial uses in the *Land Use Code* be reviewed and if the council could not accept their recommendation for whatever reason, that they ask staff to revise the entire commercial section of the *Land Use Code* and take into account and incorporate their recommendations as the subcommittee.

Bill Dupont, said he has been looking at this issue since 1992, when the Williams Center was going to develop a Super K. He was contacted, as the city planning staff knows, by the business element at the Williams Center, the existing center, asking what they could do to stop that. Their concern was about the impact to their businesses. His response was that they should work with their neighborhood. That was different because it was a zoning issue and it was ten years ago. He is a little older, has less hair, and the people on the council have changed, but the issue is the same and he was opposed to any changes. Although a year was spent in review of the issue, and he was present at 90% of the meetings, he has spent ten years, and the people that worked in the big boxes had spent almost three years on it, looking at every aspect. It has its faults, but it allows citizens to come to the council and express their views so that the council can make a determination. A big aspect of this for planning and zoning was the ability to open the door to remove the ten percent. There was a heated discussion that night and finally, the city attorney's representative said they could not discuss it because they had not properly noticed their meeting or notified the public. That is when the games began. Staff does want to remove that ten percent. If he had a retainer from a law firm he would love to have spent ten years on that retainer fee, and that is what they were doing at this meeting. They will present all of the issues that they've stated, but the economic impact has to be looked at and that is part of the provision of the *Land Use Code*, to protect and promote the general health, safety, and welfare of all present and future residents of Tucson. Wal-Mart wants the ten percent out; they want the ordinance changed. That was the real issue. He said the female vice presidents at Wal-Mart only get half of what male vice presidents get. Full time at Wal-Mart is considered 28 hours. He was invited to attend a meeting that was arranged by former Council Member Jerry Anderson, so he knows these things. He was allowed to question the representatives that were in Tucson from Arkansas. Those were the answers the representative gave Mr. DuPont, but what upset him most is when he looked at him and said they would even hire Hispanics. Mr. Dupont said he did not know that was a privilege. He asked the council to reject the proposed amendment.

Rick Lavaty, said he was chair of the planning commission last year and during the subcommittee's deliberations and throughout most of that year he was extremely glad that Mr. Tomlinson chaired the subcommittee and not him. He said he would not have laid any bets when they started that process that all three legs involved in that consideration process would be able to come together with a document that all sides would support. The support is not without some concerns, nor is it without some controversy, but that is almost, by definition, the result of a consensus document. He was present as former chairman of the planning commission to ask the council not to adopt that commission's recommendation. He asked the council to support the version of the amendment that the city manager and staff proposed.

Like Mr. Tomlinson, if the council felt they could not support the city manager's recommendation he asked them to look at the history and tradition that the council and the city has of neighborhood and citizen participation and honor the commitment the committee members made of hundreds of hours that were involved in developing the recommendation. The commission would very much like to look at the entire commercial code of the *Land Use Code* and that issue would appropriately be part of that investigation. He urged the council, rather than to put aside the amendment and the work of the members of the subcommittee, to continue the item if they could not accept the draft. He thinks it is a substantial improvement over what currently exists. It removes a lot of ambiguities; it is supported by the city's professional planning staff, by neighborhood representatives, and by the two commissioners.

In the event that that was not a possibility he asked the council to look at honoring the commitment the commission members made. It is getting harder and harder for the council to fill the appointments to its major commissions and it is not going to get easier if after hundreds of hours of work the mayor and council decide to disregard that work. That is the council's prerogative, they are the policy decision-makers and the commission is advisory, but some consideration should be given to the amount of work that went into this issue. He said others would talk about the technical aspects and try to pick apart on particular section or another. He did not think anyone could ever write a 40 page piece of legislation that everyone would agree with entirely, but the subject amendment is a good revision. It goes a long way toward cleaning up a very hastily written part of the code, one that is prone to causing an incredible amount of controversy and making it very difficult to negotiate positions between the parties. It ultimately winds up causing every single project that comes up to be sent to the mayor and council. Realistically, there have to be places in the city where a big box store can be developed without anyone objecting. That is what the by right provisions in the review were intended to look at and try to define.

John Moshier, representing the United Food and Commercial Workers', Local 99, submitted a copy of a letter he sent to the council last week. The big box ordinance that the mayor and council adopted in 1999 did two important things. It provided for public review and approval by the city council, which is the city's most public and accountable body, of all big box developments so that they would not be placed in inappropriate locations. It was an important land use planning tool. The second thing the ordinance did was it set forth design performance criteria that dealt with aesthetic improvements for what the big box buildings would look like and operational improvements for how they would be operated. The proposed amendments have revised and improved the design performance standards, but they

severely cut back and in some cases eliminate the public review and comment process that was central to what was done in 1999. That damages the usefulness of the subject ordinance as a planning tool.

Mr. Moshier said his union is in support of the idea of improving design and operating requirements for big box stores. However, they urge that the ordinance as proposed is not the way it ought to be done because it virtually eviscerates the public review and approval process that is central to the ordinance as it presently reads. It is a trade-off of updated design requirements, which are good, but in exchange, the public comment and review process that has been so important over the years is lost. That is what the developers want and it was his understanding that much of the subject ordinance was drafted by the Wal-Mart attorneys, so it is not surprising that it has what they want. What they want is a checklist of criteria so they can say that if they meet all of those criteria they can have their store regardless of whether it is good for the neighborhood. It would be in some instances by right and in other cases through the zoning administrator or through some administrative approval that does not even require a public hearing.

He said the developers were looking to silence the neighborhoods and they want to use the carrot of prettier and better-looking stores, but better looking stores will not help with a lot of the problems that big boxes bring. They do not help with traffic; they do not help with noise or the impact on existing businesses. They do not help with the impact that building a big box store in an area before anything else is developed will have on the planning process for development in the area.

Mr. Moshier said it was obvious that a lot of work had gone into the proposed ordinances and some of it was very good, but the council is not serving as a rubber stamp. Just because people had worked hard on the proposed amendment did not mean that everything they presented is something that ought to be passed. Unfortunately, so much of what is written in the pages he read struck him as being almost window dressing, or camouflage. There are pages and pages of detailed regulations where people are going to stand at property boundaries with sound decibel meters and determine what the noise levels are at various times of the day and night. Are people going to keep track of when trucks come in and out of the sites, when they leave and when they deliver? He said that is a lot of pages, but how are the regulations going to be enforced? Will a traffic cop stand out there with a sound decibel meter to make sure that people are doing what they are supposed to do? It is great if the property owner wants to comply, but if the property owner does not care to comply there is no teeth in it. The grocery restriction, the ten percent floor area space limitation has been eliminated in the amendments, the objection seeming to be that it is solely a union issue.

Mr. Moshier said yes, he was present on behalf of the union saying that it should be left in, but the fact is that the interest of the union, the neighborhoods and good city planning often coincide and they do that in this case. His union wants to keep existing stores in business, they want to keep good jobs and he did not think anyone could say with a straight face that a big box super center retailer pays the same kind of wages or provides the same sorts of benefits that traditional grocery stores do. He asked the council not to adopt the proposed ordinance. He said it made sense to continue looking at the design criteria that people have worked so hard on, but taking the council's input in the process and the people's ability to participate and bring these important matters to the council, guts completely what was done two years ago and that is too big a step to take. He urged the council to reject the proposed amendment.

Frank Bangs, representing Wal-Mart, said he and his partner, Mary Beth Savel, participated in the planning commission's work on the proposed amendment. They attended most, if not all, of the subcommittee meetings and many of the informal meetings that were held with neighborhood representatives and other stakeholders in the process. He wanted to echo Mr. Elias' commendation to the members of the subcommittee, especially its chairman, Rob Tomlinson, for their efforts. They, along with city staff, worked very hard to achieve consensus on some very difficult issues and he thought they deserved the community's thanks for their efforts. As a previous speaker mentioned, the measure before the council was a compromise. It was the product of ten months of deliberations by the planning commission and the subcommittee and like all compromises, it was not perfect. No one got everything they wanted. For example, as mentioned by previous speakers there are strengthened design standards in the regulation before the council and many of them taken by themselves would be unacceptable to his client, but they are part of a whole, of a package, part of procedural changes that he believed will streamline the process and make it work, so in the total package it is acceptable to Wal-Mart. He asked how that would happen and said first, through changes to the decision making process the draft adds incentives which make conflicts between big boxes and residential uses less likely by granting some of them as by right uses in certain situations.

Mr. Tomlinson referred to the 500-foot separation issue and Mr. Bangs said that was the one change that the commission made to the subcommittee's proposal. It was the one item that was controversial and he thought resulted in the very close vote, the 7 to 5 vote by that body. As he understood the reasons that were given by a majority of the commission for their action they were concerned that the threshold requirements were too restrictive and would not really produce a sufficient incentive for developers to locate in areas that are less sensitive. While he shared their concerns about the practical availability of sites under the by right process Wal-Mart was willing to live with the proposed compromise. They are willing to see how it works in practice and if it turns out to be no incentive they will come back and talk to the council and staff, but for the time being they are willing to live with the incentive.

Mr. Bangs said the revisions authorize modifications to the big box development standards and describe the circumstances under which they can take place. The existing regulations do that, but under no restrictions. They do not protect either the developers or the neighborhoods in the way they are given. The revisions provide specific standards for those modifications. They streamline the decision-making process. As had been stated, currently the special exception decisions are made by a hearing officer subject to appeal to mayor and council. Regarding whether or not there would be any less due process as a result of the amendment, Mr. Franks said he did not think so. The hearing officer process offers the same kind of notice and opportunity for a full public hearing and there are no five-minute limitations in the zoning examiner's hearings. He thought the council knew from its experience in receiving recommendations and actions that have come from the zoning examiner that he makes an extremely good attempt to resolve issues before they get to the council.

Mr. Bangs thought that giving the zoning examiner the decision-making opportunity in the first instance would encourage parties to make compromises at that level rather than come before the council and play politics. Removal of the grocery store limitation is part of the compromise before the council and in all of the testimony before

the subcommittee and the commission, no evidence was offered to support any kind of rational land use planning basis for it. He agreed with the conclusions that were made by staff, the subcommittee and the commission on this issue and commended them to the council.

Mr. Bangs said the other recommendation that was made by the planning commission that was not part of the proposed amendment was, as Mr. Tomlinson described, the request that whatever the council did at this meeting they should expand this effort to examine the commercial procedures for all uses, not just big boxes.

Wil Westholm, concerning the ten percent clause, said he did not know how it would benefit him to have a big box store with regulations that say ten percent have to be for one thing and 90% for another. It seemed to him that that lessened his chances of going to the store. It seemed to be a slam against big box stores. He did notice some special interest group involvement in the issue. It seemed to him that if the amount of goods a store can carry were limited, they would have to drive up the prices to support the goods that they do carry or people will be forced to go to other stores. With the economy as it is, things being tighter, people are definitely having to shop around more. It seemed to him that the special interest group was taking away the customers' choice to do that. He could exercise the option to go to places in the county, not spend dollars in the city and not pay sales taxes, but he thought the proposal that was made was good. The subcommittee has seen this particular issue several times and has voted it down several times. He did not see why the council should do any differently.

Uve Fink, representing the El Montevideo Neighborhood, said for the past ten months or so he had been regularly attending the meetings of the big box subcommittee. Under the able leadership of Mr. Tomlinson, they had done an outstanding job of coming forth with an excellent document that establishes the guidelines for large-scale retail development in the Tucson area. It was not an easy process and it involved many compromises. Without going into many of the details he said the three groups that came together as a requirement of the city's planning department, the neighborhood interests and the concerns of the large scale retail establishments, such as Wal-Mart, did not just cast off the ten percent food restrictions as was intimated a little bit earlier. They actually spent four weeks, maybe ten hours, discussing that subject and it went back and forth, but they could not come to a consensus as to what type of building should go into the document for that type of restriction. He thought that in the end an excellent document was developed and urged the city council to vote for it and to vote against the amendment passed by the planning commission. That amendment was made in haste, without public understanding of all of the negative consequences it would entail.

Anne Murray, said she had prepared copies of an attachment to her brief statement and submitted them for the record. She was present to urge the council to reject the proposed amendment, but first wanted to express appreciation for the work of the subcommittee, especially the chair, Mr. Tomlinson, and the planning staff and the planning commission. She was one of the observers who faithfully attended those weekly meetings month after month and she was there for almost every one, so she was somewhat familiar with the proposed amendments and how they got to the council. She wanted to briefly state the elements that concerned her as a citizen, as a homeowner, and as a person who is very proud of her neighborhood. The amendments

remove the existing stand alone document, which is a clear guide to a unique kind of land use development and it embeds the regulation of large retail establishments throughout the *Land Use Code*. Definitions and requirements are organized by zone and are subject to the decision of the zoning examiner. She would understand that to have the consequence of being able to be modified or get a variance at the will of the zoning examiner. Thus, a neighborhood mitigation requirement that is currently in place could disappear in the future.

The amendment contains ambiguous language, for example, in the purpose section, 3597.A., the developer is "encouraged" several times. Encouraged does not mean required. The absence of a requirement can have a consequence that concerned her. The ten percent grocery general merchandise restriction is removed. That retail combination drives size, it gives big box grocery, plus big box general merchandise, hundreds of thousands of square feet under one roof with one checkout exit. People know from experience that they are huge, invasive structures that generate heavy loads of traffic.

A report from Columbia University reminds that large retail establishments are big precisely because they depend on volume to generate profit. The larger the size, the larger the volume and the greater the profit. Separating grocery from general merchandise allows site control over the impact of 24-hour on time delivery schedules that grocery and the refrigerator trucks have to be keep running. Residents are told that the impacts on their neighborhoods can be mitigated, but that is not a workable remedy because the mitigation only happens with 24-hour monitoring and enforcement by the neighbors. That is an excessive burden on ordinary working families.

Ms. Murray said the amendment removes the type three legislative process from LRE developments and she hoped the mayor and council would object to being relegated to an appeal position on an issue that creates so much concern for citizens. The mayor and council are elected to represent the residents and having no representation in this kind of land use was a serious concern to her, as she hoped it was to the council. Finally, everyone knows that the city has a budget shortfall. Although the planning commission insists that land use is not an economic issue, she asked the council to be aware of the negative impact of big boxes on communities large and small throughout the country. There is evidence that large retail establishments cost the city more than the revenue they return. Many factors are involved, for example loss of small business revenue, which is local and stays in the community. She has researched that issue and submitted documented references that support all of the statements she had made, particularly the last one. She asked the council to stop and think that a large retail establishment can cost more than it gives back to the city and to not approve the proposed amendments.

Joyce Joosten, said during the past year she has served as the only neighborhood representative with voting rights on the big box subcommittee. During the two years prior to her work on the subcommittee she labored with the subject ordinance relative to the Target big box that will be built at Old Spanish Trail and Harrison. The ordinance was not easy. It is filled with ambiguities and leaves much interpretation to the reader, and that was putting it nicely. The ordinance as proposed literally stinks. The subcommittee heard countless hours of testimony from neighbors, developers, the planning department, the zoning examiner, and the development review board and they encouraged the subcommittee if it did nothing else to remove the

uncertainties. The most unfortunate result of the ambiguities is the friction that they cause among the developers, neighborhoods, city staff, and council members. It is not pretty and it does not create a sense of community. People cannot easily compromise when they do not know the rules and they are important rules such as how far back are the buildings going to be.

It should not take two years for a big box project to come before the council for approval. The participants in these endeavors should not have to walk away wondering what body parts are missing. They should have rules. She, along with countless others, has succeeded in bringing before the council a document that removes all of the ambiguities, she hoped. The largest uncertainty for neighborhoods is the all side applicability. The proposed revision addressed the entire site. Developers and neighborhoods clearly see these projects as power centers. Where there is more than just a big box, a synergy is created by the businesses that benefit from one another. All side applicability is not in the current ordinance as it is interpreted. The subcommittee created something for everyone by generating three processes, the by right process, which has big boxes separated from neighborhoods with other intense commercial uses results in little or no impact to neighborhoods. A limited number of sites would fit in that category. The administrative process would be permitted upon development services recommendation to determine if the appropriate infrastructure is in place and the final process is legislative, which is where most all boxes will fit.

While she was initially concerned about giving up the opportunity to be heard before the council each and every time, it became clear to her that by having the zoning examiner review the projects the citizens would have the opportunity to appeal to the mayor and council. If neighbors and developers work together, the zoning examiner could approve it, tell everyone they did a good job and to go home. For those projects that are controversial, all parties will come back. The planning commission recommendation places more of the sites in the "by right" provision, which eliminates neighborhood input and has minimal design criteria. That was not the intent. She asked the council to vote a resounding no to the planning commission's recommendation. A yes vote would send a clear message that neighborhoods do not matter.

Regarding the food and beverage issue, Ms. Joosten said while she realized that it was controversial she did not realize the political implications. That is out of her forte, she is a Democrat, but at this meeting, she thought she was supposed to be green or purple. In the current ordinance developers clearly believe there is a conspiracy against big boxes having a combination sale of food and beverage. They believe that they are being treated unjustly. Neighbors do not believe that is the case and that is certainly not the community's desire. In the revised ordinance the grocery store units clearly believe they are being given the short end of the stick and that the city is on the road to poverty and low wages.

A lot of development is going on in her neighborhood and it scares people because it is change. Everyone comes to the table with a big no printed on their forehead and that is how she viewed this situation. No one should walk away with it all. She said the mayor and council could not give it all to one, or give it all to the other without isolating great factions of their constituents. She saw a quote in her son's social studies book that said, "In a democracy, people must work together to solve problems." She said a compromise was clearly in order and begged the council not to dismiss the revision out

of hand. That would be throwing the baby out with the bath water. She asked them to have the courage to work it through and said if they did not, they would be resigning all parties to a painful process of working through adversarial positions. As the voice of experience, that is not something she would wish on anyone.

Chris Tanz, said the existing big box ordinance did not have a purpose statement. The proposed new ordinance does. The work of drafting the purpose statement was generously provided by one of the attorney's for Wal-Mart, presenting the spectacle of the very corporations the city is trying to control articulating the goals of the city's *Land Use Code*. The purpose statement is not bad; in fact, it is quite good as far as it goes. It includes a number of clauses that address some of the legitimate concerns of people who live immediately adjacent to the big box sites, such as issues of noise, light, and traffic spilling into the neighborhood. However, there are other legitimate concerns of the community as a whole, raised by citizens in the campaign that led to the writing of the original big box ordinance, that do not show up at all in the purpose statement. What is omitted in the purpose statement and in the ordinance is as important as what is included.

In the heated process that led to the 1999 ordinance, the starting point of neighborhood groups was the goal of keeping big boxes from neighborhoods. As the process continued people learned more about the effects of big box stores and expanded their critique. At the public hearings neighborhood advocates also addressed the economic impacts of big boxes on the community and how they affect land use patterns and traffic overall. The big boxes with the greatest impact on the general life of the community are those that also supply the staples of daily life, such as food. People shop for food all of the time. Stores like Wal-Mart have aggressive expansion plans.

In Phoenix, the stated goal is one super store every five miles. The affect of the super stores is to wipe out other supermarkets that are smaller and do not have a cushion of general merchandise sales. The collapse of supermarkets also undermines neighborhood shopping centers, which are anchored by a supermarket so that people have to drive farther and farther to meet their basic needs. This has drastic effects on the community. It increases traffic and decreases the quality of life. Those effects need to be taken into account. Tucson is already struggling with issues of traffic congestion. Whenever these kinds of issues were brought up during the meetings of the subcommittee that was charged with amending the big box ordinance, one member of the planning commission consistently ruled them out, stating that they did not belong in the *Land Use Code*. That turns out not to be true. An example is the purpose statement of the big box ordinance of a city in California that does establish economic and broad land use goals, broader than just protecting adjacent neighborhoods although that of course is also hugely important. Quoting from that code she read, "The purpose of this general plan and zoning text change is to preserve the city's existing shopping centers."

Ms. Tanz said she was not asking that that language be part of the Tucson Ordinance, she was just quoting it to show that people are entitled to use a land use code to address those types of issues. Because the subcommittee was barred from taking up those issues, she felt they conducted months and months of discussion under false premises.

Ms. Tanz said in the existing ordinance, one provision did touch on the economic impacts of big boxes and that is the ten percent restriction. Some people call it a union

provision because the food workers' union pressed for it and supports it. Many supermarket chains are unionized and provide much better wages and benefits than Wal-Mart. Some others, although they were not unionized, matched the union wages and benefits. However, the issue is not just a union issue or just an issue for immediately adjacent neighborhoods, as setbacks are, but a quality of life issue for the community as a whole. Although the ten percent restriction is not binding, the mayor and council can override it. The existing ordinance requires a public hearing to override it and therefore keeps these very consequential decisions in the public arena and the public eye. It might even make it possible for communities to resist the pressure toward ever more gigantic stores in ever more gigantic parking lots as the city's dominant form of commerce. In the amended ordinance, the ten percent food restriction has been dropped and there is no language anywhere that lets these broad issues of community design be taken up in the approval process for big boxes. When there is an explicit purpose statement in an ordinance and when that purpose statement does not include certain goals, it becomes that much more difficult, if not impossible, to invoke those goals in applying the ordinance. It is legitimate in principle for a land use code to provide a framework for tackling the broader impacts of big boxes, but if the proposed amendment passed there would be no way to do it under the Tucson *Land Use Code*. Although this work is very grueling, many people put in a lot of effort, and she also attended a lot of meetings. She urged the council to vote against the proposed amendment.

Gayle Hartmann, said she had not followed the lengthy activities of the subcommittee and the detail that other speakers had, but she has served on such subcommittees, so she could appreciate the work that was done. Unfortunately, it seemed to her that in spite of all of the hard work and long hours the results of the revisions might be, at least in some instances, worse than the original, although she understood the design criteria and some other things are better. Like many others who had spoken she has been involved off and on for years in the controversy over how to address big boxes in Tucson, the problems they cause and how those problems can be alleviated. It seemed to her that there were many issues of concern, but at least a couple had been touched on at this hearing, one of course being the huge economic impact that big box stores have on businesses around them.

As previously stated, local grocery stores tend to pay better wages, they tend to provide benefits and to have more of a community aspect than big boxes do. When grocery stores go under, the shopping centers that they are in tend to go under and she did not look forward to the day when she would have to drive ten or twenty miles because the only place to shop would be a big box store on the fringes of the community. She thought it was critical that the economic impact be addressed in whatever ordinance the council considered. She thinks that is an appropriate part of a land use code and critical to the proposed ordinance doing what it is supposed to do.

Ms. Hartmann said the second issue she had heard was the need for an approval process that would allow everyone to be heard, not a "by right" process. She did not think there would ever be an instance with a big box store where someone would not be expressing a concern about its location. She could not imagine anywhere in the community where there would be no objections. It seemed to be important that there be a legislative process and that the council have the right to listen to the concerns of individuals in almost every case. Thus, there were amendments that needed to occur to the proposed ordinance that would address economic issues, the question of approval, of

public input and if the council could come up with those amendments at this meeting she urged them to go forward. If not, she asked that they vote against the proposed amendment.

Mayor Walkup asked if there was anyone else in the audience who wished to address the council.

Barbara Jamieson, which is on the other side of the wall from El Con Mall, said her concern was that if the proposed ordinance was approved, the existing agreement between El Con and the adjacent neighborhoods would be reconsidered. She was specifically concerned that Target and Home Depot who are currently restricted would approach the council and say that it is not fair, that the agreement should be revisited. Her neighborhood, those residents who live next to the wall and the other five neighborhoods around El Con are all secretly very worried about that possibility.

Mayor Walkup asked if anyone else wished to address the council. There was no one; he asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Council Member West, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup asked the city clerk to read ordinance no. 9827 by number and title only.

Ordinance No. 9827

Relating to planning and zoning and Large Retail Establishments; amending portions of the Tucson Code, Chapter 23, Land Use Code; Article II, Zones, Division 5, Commercial Zones, Division 6, Mixed Use Zones, Division 7, Industrial Zones; Article III, Development Regulations, Division 3, Motor Vehicle and Bicycle Parking Requirements, Division 5, Performance Criteria; Article V, Administration, Division 4, Procedures; Article VI, Definitions, Division 2, Listing of Words and Terms; and setting an effective date.

Mayor Walkup asked the council's pleasure.

Council Member Ronstadt asked staff to clarify how the proposal, if approved, would affect the agreement between the neighborhoods and El Con Shopping Center.

Michael McCrory, assistant city attorney, said it would not directly affect the development agreement between the city and El Con. That would take separate mayor and council consideration. In addition, El Con is presently governed by rezoning conditions that were adopted by the mayor and council that established the regulations that apply to that site. Any change would have to come back to the mayor and council. Whether or not arguments could be made that it is changed, is an issue that would then be before mayor and council, but there is nothing automatic that would affect El Con. Anything having to do with El Con would have to come back to the mayor and council.

Mayor Walkup asked if there was any further discussion.

Council Member West said the planning commission and the subcommittee had done some work on the subject amendment and she had heard some very good testimony at this hearing. She thanked everyone for attending. She said it seemed to her that maybe the council had created a monster with the big box stores in the first place.

It was moved by Council Member West, seconded by Council Member Leal, that the council not approve staff's recommendation to adopt ordinance no. 9827.

Mayor Walkup asked if there was any discussion.

Council Member Ronstadt said he met with members of the subcommittee and other interested parties last week and he had actually been following this issue very closely. He thought Ms. Joosten, Mr. Tomlinson, and Mr. Bangs represented a triad that was put together on the subcommittee and they really hit the nail on the head that this was a serious bit of work that took a lot of compromise, a lot of hours and hard labor. The thing that was not said by Ms. Joosten, but was said to him when they met, was that the status quo represents a great deal of uncertainty and is really worse for the neighborhoods than what was hammered out in March and October by the work of the subcommittee. One of the major reasons he did not vote for the big box ordinance when it first came before the council in 1999 was because it was rammed through in a shoddy process and he thought Ms. Joosten echoed his feelings when she said that it was a poor piece of work. He thought the proposal before the council was what should have happened in 1999, a serious process that represented interested parties. It takes the time, is thoughtful, and contains recognition that not everyone's issues would be fully accepted, but everyone's issues were heard and addressed in some form. He thought it was only fair to the community and to the committee for the council to act on their work.

A substitute motion was made by Council Member Ronstadt, seconded by Council Member Dunbar, to pass and adopt ordinance no. 9827, as recommended by the planning commission's big box review subcommittee with no alteration whatsoever.

Mayor Walkup asked if there was any discussion on the substitute motion. There was none.

Upon roll call, the results were:

Aye: Council Members Dunbar and Ronstadt

Nay: Council Members Ibarra, West, and Leal; Vice Mayor Scott and Mayor Walkup

Absent/Excused: None

The motion was declared failed by a roll call vote of 5 to 2.

Mayor Walkup asked if there was any discussion on the motion not to approve the city manager's recommendation.

Council Member West said one of the things the council has alluded to many times is the fact that Tucson has one of the most complicated zoning ordinances in Arizona. It has different legislative, administrative and appeal procedures and certainly some of that was reflected in the proposed ordinance.

It was moved by Council Member West that staff be directed to work on the design and operation features of the ordinance.

Mayor Walkup said the council needed to vote on the main motion first.

Council Member West said her motion was that the council not approve ordinance no. 9827 and they had done that.

Mayor Walkup said the motion was still on the table.

Michael House, city attorney, said the substitute motion failed, so another motion would be needed to dispose of the item.

Council Member West said that was what she was doing. She was making another motion.

Mr. House said there was another motion.

Council Member Leal reiterated that there already was another motion. The council needed to vote on the first motion.

Council Member West said she thought the council just did that because her motion was to not approve the proposed ordinance. She asked for clarification and said her motion was not to approve it.

Mr. House said yes, a vote was needed on that motion.

Council Member West continued that a substitute motion was made to approve the ordinance.

Mayor Walkup said Council Member West could withdraw the main motion and then make a new motion.

Council Member Leal said the motion to deny was still on the floor and the council needed to vote on that motion.

Mr. House said unless the motion was withdrawn it was still on the floor and needed to be voted on.

Mayor Walkup asked for a roll call on the motion to not adopt ordinance no. 9827.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: Council Members Dunbar and Ronstadt

Absent/Excused: None

The motion was declared carried by a roll call vote of 5 to 2.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member West, seconded by Vice Mayor Scott, that staff be directed to work on the design and operation features of the ordinance and expand the review to include the design and operation standards for the rest of the commercial land use code, that the special exception land use procedures for big boxes should not be changed, and that the grocery square footage limitations remain intact.

Mayor Walkup asked if there was any discussion.

Council Member Ronstadt said he hoped the motion would be voted down. He said he would be remiss if he did not take a minute to thank the subcommittee for the work it did. Regardless of the outcome at this meeting, he wanted to let its members know how much he valued the effort they had made. He knew it was frustrating to see that much time and effort cast aside and he wanted them to know how much he appreciated their efforts.

Mayor Walkup asked if there was any further discussion.

Council Member Dunbar said she agreed with Council Member Ronstadt's comments. She continued that the purpose of the *Land Use Code* is to insure the best use of land. The council was telling the public that it knows what is best for them. The council knows that people should be allowed to buy groceries when they buy general merchandise and this whole issue was being defeated just because of the grocery issue. She was disappointed. She appreciated the work of the subcommittee. She knew they had spent countless hours on the ordinance.

Council Member Leal said when this issue comes back to the council he thinks it is crucial that the current mayor and council review remain in the process. It should not be cut out. People have said the zoning examiner, Peter Gavin, is good, but he will not be with the city forever and the council needs to enact ordinances that work even if the best person is not in place. Public scrutiny and the right for citizens to come to their elected officials should not atrophy in this community or anywhere else. He expected to see that in the ordinance when it is brought back and he would not support it if it were not.

Mayor Walkup thanked Mr. Tomlinson and said he took a different view. He thought Mr. Tomlinson had moved the ball forward and the motion that was before the council was a decent motion and it would build on a lot of the research and testimony that Mr. Tomlinson had created over the past years. He reiterated that Mr. Tomlinson had moved the ball forward and the motion took the issue to a higher level where it could be considered on a citywide basis. He thought it was appropriate and all of Mr. Tomlinson's efforts certainly had not been lost.

The motion that staff be directed to work on the design and operation features of the ordinance and expand the review to include the design and operation standards for the rest of the commercial land use code, that the special exception land use procedures for big boxes should not be changed, and that the grocery square footage limitations remain intact was declared carried by a voice vote of 5 to 2 (Council Members Dunbar and Ronstadt voting "nay").

14. APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

Mayor Walkup announced that city manager's communication number 185, dated March 24, 2003, would be received into and made a part of the record. He asked if there were any appointments by any member of the council. There were none.

15. CALL TO THE AUDIENCE, for persons desiring to speak

Mayor Walkup announced that this was the time any member of the public was allowed to address the mayor and council on any issue. Speakers would be limited to three-minute presentations for a total of 15 minutes. He asked if anyone in the audience wished to address the council.

A. Proposed Ordinance Regarding Public Assembly

Bill Katzel, said he wanted to comment on two items. The first was the cancellation of the Wednesday, March 6, 2003 town hall meeting and the corresponding Monday, March 31, 2003, agenda item on protest regulations. The council already had a copy of his testimony on that subject, distributed by the city clerk, with a copy of the Bill of Rights attached. The proposed ordinance is a direct affront to that document, the Constitution of the United States, in particular, the First Amendment, Freedom of Speech, the Fourth Amendment, Probable Cause, and the Fourteenth Amendment, Due Process. He suggested that the council permanently cancel the proposed ordinance and give it a proper burial. If they insist on considering it, they should simply condense the 28 pages in one concise sentence that if two or more people want to assemble they should apply to the chief for a class one or two permit, as applicable, and if denied, go to court.

The second item he wished to address was the Tucson-Pima County Bicycle Advisory Committee. He said on not one, but two occasions that committee opposed two city attorneys' misinterpretations of ARS 28-704, a., as applied to bicyclists. Mr. Katzel said that advice went unheeded and what is good for the goose is good for the gander.

Mayor Walkup asked if anyone else wished to address the council.

B. Memorial to Dan Felix

Bill Dupont, regarding the comments that City Manager James Keene made at Dan Felix's funeral, said his neighborhood worked in depth with Mr. Felix since it is adjacent to Reid Park. Mr. Felix was always a gentleman, always showed great concern, was a man of his word, always had a handshake and warm touch. He always kept in contact and the neighborhood misses him and hopes his replacement is as good.

Mayor Walkup asked if anyone else wished to address the council. There was no one.

16. ADJOURNMENT: 10:46 p.m.

Mayor Walkup announced that the council would stand adjourned until its next regularly scheduled meeting to be held on Monday, April 7, 2003, at 2:00 p.m., in the Mayor and Council Chambers, in City Hall, 255 W. Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the city of Tucson, Arizona, held on the 24th day of March, 2003, and do hereby certify that it is an accurate transcription of the magnetic tape record of said meeting.

MANAGEMENT ASSISTANT

KSD:DA:DP:mjv:ss
pr agnst tp:ss